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In the Supreme Court of the United States.

OCTOBER TERM. 1904.

CENTRAL OF GEORGIA RAILWAY COMPANY,
PLAINTIFF IN ERROR,

versus

A. O. MURPHEY AND J. L. HUNT, PARTNERS, DOING BUSINESS AS A. O. MURPHEY & HUNT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF FOR PLAINTIFF IN ERROR.

HENRY C. CUNNINGHAM,
JOHN I. HALL,
LLOYD CLEVELAND,
ROBERT L. BERNER,
For Plaintiff in Error.

THE FRANKLIN PRTG. AND PUB. CO., ATLANTA

In the Supreme Court of the United States

OCTOBER TERM, 1904.

CENTRAL OF GEORGIA RAILWAY COMPANY, Plaintiff in Error, *vs.* A. O. MURPHEY and J. L. HUNT, Partners, doing business as A. O. MURPHEY & HUNT.	No. 408.

In Error to the Supreme Court of the State of Georgia.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

On the 31st day of July, 1897, A. O. Murphey & Hunt delivered to the Central of Georgia Railway Company, at Barnesville, Ga., a car-load of grapes, to be shipped from that point to Omaha, Nebraska, and it was routed by the shippers as follows: Over the Central of Georgia, over the Western & Atlantic, over the Nashville, Chattanooga & St. Louis, over the Louisville & Nashville, and over the Wabash Railroad. There was issued to A. O. Murphey &

Hunt a bill of lading for the car-load of grapes, which showed the routing as above stated, and which bill of lading was signed by A. O. Murphey & Hunt (Record pp. 35 and 36), and became the contract of shipment between the Central of Georgia Railway Company and the said A. O. Murphey & Hunt. The obligation in the bill of lading on the part of the Central of Georgia Railway Company was "to carry (the grapes) to said destination, if on its road, or to deliver to another carrier on the route to said destination, subject in either instance to the conditions named below, which are agreed to in consideration of the rate named."

Omaha, Nebraska, is not on the road of the Central of Georgia Railway Company, and the contract was to, therefore, carry to the end of its line and there deliver to another carrier on the route to destination.

One of the conditions upon which the shipment was received and agreed to by both the shipper and the carrier is contained in paragraph 5 of the bill of lading, which is as follows (Record p. 36):

> "5. That the responsibility, either as common carrier or warehouseman, of each carrier over whose line the property shipped hereunder shall be transported, shall cease as soon as delivery is made to the next carrier or to the consignee; and the liability of the said lines contracted with is several and not joint; neither of the said carriers shall be responsible or liable for any act, omission or negligence of the other carriers over whose lines said property is, or is to be, transported."

The grapes moved under said bill of lading and reached Omaha, Nebraska, in a damaged condition.

The statute of the State of Georgia which provides a remedy for a shipper who sustains loss in a shipment of this kind is contained in the two following sections of the Code of Georgia of 1895, to wit:

> "§2317. *Carriers must trace freight.* When any freight that has been shipped, to be conveyed by two or more common carriers to its destination, where, under the contract of shipment or by law, the responsibility of each or either shall cease upon delivery to the next "in good order," has been lost, damaged or destroyed, it shall be the duty of the initial or any connecting carrier, upon application by the shipper, consignee or their assigns, within thirty days after application, to trace said freight and inform said applicant, in writing, when, where, how and by which carrier said freight was lost, damaged or destroyed, and the names of the parties and their official position, if any, by whom the truth of facts set out in said information can be established.
>
> "§2318. *Penalty for failing to trace.* If the carrier to which application is made shall fail to trace said freight and give said information, in writing, within the time prescribed, then said carrier shall be liable for the value of the freight lost, damaged or destroyed, in the same manner and to the same extent as if said loss, damage or destruction occurred on its line."

On August 20, 1897, A. O. Murphey & Hunt availed themselves of the provisions contained in section 2317 of the Civil Code of Georgia, *supra,* by addressing to the Central of Georgia Railway Company, a request to

"Trace said freight and inform applicants, in writing, when, how and by which carrier said freight (the said grapes) was damaged, and the names of the parties, and their official position, if any, by whom the truth of facts set out in said information can be established."

See Record p. 11, Exhibit "A," §6.

This demand of A. O. Murphy & Hunt to trace the shipment of grapes, and give the information which they sought, was served on the station agent of the Central of Georgia Railway Company at Barnesville, Ga., and he at once transmitted this notice to trace to J. L. Graham, Claim Agent of the Central of Georgia Railway Company at Savannah, Ga., reaching him on August 21, 1897, which was the next day after the said notice was served. J. L. Graham, as such claim agent, on the last named date, directed tracers to the General Freight Agent of the Louisville & Nashville Railroad Company, Louisville, Ky., the General Freight Agent of the Nashville, Chattanooga & St. Louis Ry. Co., Nashville, Tenn., which last named company is lessee of the Western & Atlantic Railroad, and the General Freight Agent of the Wabash Railroad, St. Louis, Mo., and attached to each tracer a copy of the demand of A. O. Murphey & Hunt upon the Central of Georgia Railway Company to trace said freight. (Record p. 20.)

The said J. L. Graham, Claim Agent, followed up the original tracing done on August 21, 1897, by numerous letters and telegrams urging the information sought, which will be found set out on pages 21, 22, 23, 24, 25 and 26 of the Record.

It was impossible for the Central of Georgia Railway Company to obtain within the thirty-day limit prescribed in the statute the information called for, to wit:

> "When, where, how and by which carrier said freight was damaged, and the names of the parties, and their official position, if any, by whom the truth of the facts set out in the information called for could be established."

The Central of Georgia Railway Company having failed to furnish the information called for by A. O. Murphey & Hunt, as aforesaid, within the time prescribed by the statute, the said A. O. Murphey & Hunt instituted their suit in the county court of Pike county, returnable to the December term, 1897, against the Central of Georgia Ry. Co. (Record pp. 9, 10, 11.)

The plaintiff set out in his petition:

> That said freight was to be conveyed by more than two common carriers, the initial carrier being the Central of Georgia Railway Company, and said freight was shipped under a contract of shipment in which it was provided that the responsibility of each carrier shall cease upon *delivery to the next in good order.* (4th paragraph of petition. Record page 9.)

The plaintiffs in said petition complained that the grapes reached Omaha in a damaged condition, and that the Central of Georgia Ry. Co. had become liable to them for the amount of the damage done to said car-load of grapes because said Central of Georgia Ry. Co., the initial carrier on the route designated in the bill of lading, did not on demand of the shipper:

> "Trace said freight, and inform applicants, in writing, when, how and by which carrier said freight was damaged, and furnish petitioners the names of the parties, and their official position, if any, by whom the truth of the facts set forth in said information could be established." (Record, top of p. 10, §11 of Petition.)

The defendant answered said petition as set out on pages 14 and 15 of the Record, and also filed several demurrers and amended demurrers to said petition. (See pages 12 and 13 of Record.)

One ground of demurrer was:

> Because the law under which the suit is brought is unconstitutional in this, that it is in violation of the interstate commerce clause of the Constitution of the United States in that it affects in its operation the commerce between the several States over which subject-matter the Congress of the United States alone has jurisdiction. (Record p. 13.)

The second ground of demurrer was as follows:

> Because said law requires this defendant to procure and report to the plaintiffs certain information within a given time, and on failure to do so, then without regard to whether such information could be obtained within the time prescribed, and without opportunity to the defendant to be heard, the act imposes upon the defendant the penalty of paying damages which were caused by another railway company, a railway company with whose carriage of the goods

defendant had no connection by contract or otherwise, and such law denies the defendant due process of law and is void. (Record p. 13, §6 of Demurrer.)

The case went to trial in the Superior Court of Pike county, on appeal from the county court of said county, at the April Term, 1902, of said Superior Court. The trial court overruled the demurrers of the defendant, and excluded from the consideration of the jury all the testimony offered by the defendant railway company for the purpose of showing that it had undertaken in good faith to trace the freight and locate "when, where, how and by which carrier said freight was damaged, and the names of the parties, and their official position, if any, by whom the facts could be established." And that it was impossible for the company to obtain the information required of it by the plaintiff in the court below. Which evidence is set out on pages 20, 21, 22, 23, 24, 25 and 26 of the Record.

The plaintiff obtained a judgment for the amount sued for, with interest, against the Central of Georgia Railway Co. The defendant in the trial court filed a motion for a new trial, see Record p. 16, and the amendments to said motion, Record pp. 17 to 30, both inclusive.

The fifth ground of the motion for new trial shows (Record p. 18) that the court rejected the evidence offered on the sole ground: "That the Act required the defendant company to furnish the information in thirty days after the application was presented to it, and that the company could not defend by showing that it had made every possible effort and had failed to obtain it, or had offered to furnish in thirty days all the information it had, or that it was impos-

sible to obtain it in that time." And for said reasons the trial court held said evidence inadmissible.

Plaintiff in error, who was defendant in the trial court below, offered to prove by J. L. Graham, Claim Agent, and by whom it could have proven that "he was the Claim Agent of the defendant, that he had charge of the tracing of the freight in controversy, that he instituted the search for the information asked for by the plaintiffs, that he proceeded rigorously by letters and telegrams and urged the various lines to provide it within the 30 days required by the statute, and that it was utterly impossible to comply with the statute within 30 days, but that it was tendered as soon as it was obtained." (Record p. 27, 6th Ground of Motion for New Trial.)

This evidence was rejected by the trial court for the reason set out in the 5th ground of the motion for a new trial, Record p. 19, above quoted.

The defendant in the court below offered to prove by witnesses who testified by interrogatories, that the car reached Atlanta, Ga., the end of the line of the Central of Georgia Railway Company, in good condition, and was promptly delivered to the next connecting line, that is, the Western & Atlantic Railroad, sometimes referred to as the Nashville, Chattanooga & St. Louis Railroad Company, which last company is the lessee of the Western & Atlantic Railroad. (Record pp. 28 and 29.)

The Central of Georgia Railway Company offered the depositions of J. W. Varnon, a conductor of the N. C. & St. L. R. R. Co. to show that the car-load of grapes was delivered at 2 P. M., on August 1, 1897, at Chattanooga, Tenn.; that the car-load of grapes was delivered to that company by the Central of Georgia Railway Company in good condition, and it was delivered in like good order and

condition to the Nashville Division of the N. C. & St. L. R. R. at Chattanooga, Tenn., and was so received by it. (Record p. 30.)

This evidence was offered for the purpose of showing, first, that the grapes were delivered by the Central of Georgia Railway Company at the end of its line in good condition; and second, for the purpose of showing that the grapes were in good condition when they reached Chattanooga, Tenn., and that the grapes were not damaged until the car containing them had passed beyond the limits of the State of Georgia. See 8th ground of Motion for New Trial, beginning on page 21 of Record and ending on page 30.

The trial court overruled the motion for new trial made by the Central of Georgia Railway Company, and the railway company duly excepted by bill of exceptions to the Supreme Court of the State of Georgia. (Record pp. 7 and 8.) After argument had in said Supreme Court the court rendered its judgment affirming the judgment of the trial court below, and delivered its opinion in said case which will be found set out at large from pages 39 to 47, both inclusive, of the Record and reported in 116 Ga., p. 863, and the case is now before this court on a writ of error to the Supreme Court of Georgia.

ASSIGNMENT OF ERRORS.

The Central of Georgia Railway Company assigned error in this court as follows (Record p. 5):

> "First. In that the statute, adopted by the Legislature of the State of Georgia, contained in sections 2317 and 2318 of the Code of the State of Georgia, adopted December 15th, 1895, which sections are as follows:
>
> (Quoted above, page 3 of Brief.)
>
> is invalid when applied to this case (the case being one of a shipment from a point within the State to a point without the State) because said statute is a regulation of commerce among the several States of the United States, and is in violation of the exclusive power of Congress to regulate such commerce under paragraph 3 of section VIII of article I of the Constitution of the United States, which provides that Congress shall have power to regulate commerce with foreign nations and among the several States.
>
> "Second. That said statute is contrary to the Fourteenth Amendment of the Constitution of the United States, wherein it is provided that no State shall deprive any person of life, liberty, or property without due process of law; the operation of said statute being to deprive the Central of Georgia Railway Company of its property without due process of law."

BRIEF AND ARGUMENT.

I.

Section 2317, of the Civil Code of Georgia of 1895, above quoted, applies only in cases of a shipment where under the contract of shipment, or by law, the responsibility of each carrier shall cease upon delivery to the next in good order, and applies only in a case where connecting carriers have exercised the right by contract to limit liability to their own lines. This section requires the initial carrier, in case of loss or damage to goods, whether the loss or damage occurred on the line of the carrier located within the State of Georgia, or beyond the State of Georgia, to give specific information as to when, where, how and by which carrier such freight was lost, damaged or destroyed, and the names of the parties and their official position, if any, by whom the truth of the facts set out in said information can be established.

In order for the carrier to comply with this statute it must procure and furnish within thirty days, from the time notice is served upon it, specific information touching each requirement therein set out. If the carrier could procure information as to when, where, how, and by which carrier the freight was lost or damaged, it would not comply with the act unless it also procured the names of the parties, and their official position, if any, by whom the truth of the facts set out in the report of the carrier could be established. In other words, a failure to comply, even though full compliance be impossible, with every one of the requirements set forth, would subject the carrier to the penalty prescribed in section 2318 above quoted. The penalty is imposed by the statute on the carrier who receives such notice and who

fails to comply with each and every specific requirement set out in said section 2317, *supra,* by making it responsible and liable to the shipper in the same manner and to the same extent as if the loss or damage had occurred on its line. The Supreme Court of Georgia, in this case, treated the requirement that the initial carrier shall assume the responsibility of loss regardless of where it may occur, as a penalty upon the carrier for failing to comply with the requirements set out in section 2317 of the Act, *supra.* Section 2317 limits its operation to cases where by contract or under the law the liability of the carrier ceases at the end of its own line. While the statute does not deny the right of the carrier to receive freight, and forward it over other connecting lines, and limit its liability by contract to its own line, yet the statute in question imposes the penalty of becoming responsible for the loss or damage regardless of where it may occur, unless the carrier will at its own expense comply with the provisions of section 2317 on the complaint of the shipper. Such legislation certainly imposes a burden upon the carrier and interferes with its full freedom to contract with the shipper with respect to confining its liability to its own line, and when applied to interstate shipments, as in this case, it is an interference with the right to contract for carrying interstate traffic, and is void.

> Any person, natural or artificial, may engage in interstate commerce. Vance *v.* Vandercook Co., 170 U. S. 438, 455.
>
> The right arises from the Constitution of the United States; it exists wholly independent of the will of either the lawmaking or the executive power

> of the State; it takes its origin outside of the State of South Carolina, and finds its support in the Constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment, and can not be in advance controlled or limited by the action of the State in any department of its government. (p. 455.)

WELTON *v.* STATE OF MISSOURI, 91 U. S. 282.

In passing upon the right asserted by the State to make enactments which affected interstate commerce, upon the ground that Congress had not acted in the matter, this Court used the following language in the above case:

> "The fact that Congress has not seen fit to prescribe any specific rules to govern interstate commerce does not affect the question. Its action on this subject, when considered with reference to its legislation with respect to foreign commerce, is equivalent to a declaration that interstate commerce shall be free and untrammelled. As the main object of that commerce is the sale and exchange of commodities, the policy thus established would be defeated by discriminating legislation like that of Missouri."

These decisions are applicable to the case in hand. The plaintiff in error, a corporation existing under the laws of the State of Georgia, is a person engaged in interstate commerce, not as a seller or purchaser, but as a carrier in connection with other carriers of interstate commerce.

Such legislation, we think, could not be upheld unless its application is confined to shipments from place to place within the State of Georgia. The statute in question, however, was applied by the Supreme Court of Georgia to an interstate shipment, and, as the statute can not affect carriers beyond the limits of the State, this construction imposes a burden upon the plaintiff in error which is not imposed, and can not by this legislation be imposed, upon lines outside of the State of Georgia engaged in the transportation of freight in question from Barnesville, Ga., to Omaha, Neb., under the contract of shipment, and it is therefore an unjust burden upon the initial carrier, and a discrimination against it.

HALL *v.* DECUIR, 95 U. S. 485.

In that case, this Court, speaking in reference to the right of the States to make enactments regulating interstate commerce, said:

> "The line which separates the power of the States from this exclusive power of Congress is not always distinctly marked, and oftentimes is not easy to determine on which side a particular case belongs. Judges not infrequently differ in their reasons for a decision in which they concur. Under such circumstances it would be a useless task to undertake to fix an arbitrary rule by which the line must in all cases be located. It is far better to leave a matter of such delicacy to be settled in each case upon a view of the particular rights involved."

The Court says further (p. 488):

> "But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress."

WABASH, ETC., RAILROAD CO. *v.* ILLINOIS, 118 U. S. 558.

In that case this court reiterates the decision in Hall *v.* DeCuir, *supra*, and after referring to the cases in 94 U. S. 113, 155 and 164, said:

> "Notwithstanding what is there said, this court holds now, and has never consciously held otherwise, that a statute of a State intended to regulate or to tax or to impose any other restriction upon the transportation of persons, or their property, or telegraph messages, from one State to another, is not within that class of legislation which the States may enact in the absence of legislation by Congress; and that such statutes are void even as to that part of such transmission which may be within the State."

It was contended by counsel for the defendant in error in this case that the legislative enactment in question was the result of the proper exercise of the police power of the State. In passing upon the same contention, it was said

by this Court in Railroad Company *v.* Husen, 95 U. S. 465, 472:

> "While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health, or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the State; while for the purpose of self-protection it may establish quarantine, and reasonable inspection laws, it may not interfere with transportation into or through the State, beyond what is absolutely necessary for its self-protection. It may not, under the cover of exerting its police powers, substantially prohibit or *burden* either foreign or interstate commerce."

In Western Union Telegraph Co. *v.* Pendleton, 122 U. S. 347, this Court, in passing upon an act of the Legislature of Indiana which required telegraph companies to deliver dispatches by messenger to the person to whom they were addressed, or their agent, provided they resided within one mile of the telegraph station, or a city or town in which such station is, was held by this court to conflict with that clause of the Constitution of the United States which vests in Congress power to regulate commerce among the States, in so far as the statute attempts to regulate the delivery of such dispatches from places situated in other States. The Court said:

> "The police power of the State under the Constitution, although difficult to define, does not extend

> to the delivery at points without the State of telegraph messages received within the State."

And the Court added:

> "Whatever authority the State may possess over the transmission and delivery of messages by telegraph companies within their limits, it does not extend to the delivery of messages in other States."

The statute of the State of Georgia, Code of 1895, section 2276, provides that:

> "§2276. *Effect of notice to limit.* A common carrier can not limit his legal liability by any notice given, either by publication or by entry on receipts given or tickets sold. He may make an express contract, and will then be governed thereby."

This statute has frequently been construed by the Supreme Court of Georgia to authorize a carrier to make a contract for a shipment to a point beyond its own line and limit liability to its own line. See cases cited in this case in 116 Ga., *supra*.

Applying the decision in 122 U. S., *supra*, to this case, it is not within the power of the State to require a carrier to become responsible for loss of an interstate shipment which occurred on another line, and in another State, where the carrier had, as in this case, made a contract to carry to the end of its line and there deliver to the next connecting carrier, and limit its liability to its own line.

Further referring to this question, on page 358, 122 U. S., *supra*, this court said:

> "The object of vesting the power to regulate commerce in Congress was to secure, with reference to its subjects, uniform regulations, where such uniformity is practicable, against conflicting State legislation. Such conflicting legislation would inevitably follow with reference to telegraphic communications between citizens of different States, if each State was vested with power to control them beyond its own limits."

The same is true of the legislation now under consideration. The law of Georgia in question, as construed by the Supreme Court of Georgia in 116 Ga., *supra*, is made applicable to an interstate shipment, and the carrier is required to perform the duty of ascertaining at what point in other States the merchandise was damaged, and for failure to do so, inflicts upon the initial carrier the heavy penalty of becoming responsible for the lost or damaged freight, which in this case confessedly occurred beyond the limits of the State of Georgia.

The Supreme Court of Georgia in this case say:

> "It is equally well settled, that the incorporation of a railroad company by a State and the granting of special privileges to carry out the object of incorporation, particularly the authority to exercise the State's right of eminent domain, and the obligation assumed by the acceptance of the charter to transport all persons and merchandise upon like con-

> ditions and for reasonable rates, affect the property and employment with a public use, and thus subjects the business of the company to legislative control in the interest of the public."

We do not deny the soundness of this proposition as a general rule, but we do deny that the fact that a railroad corporation and its property and employment is affected with a public use which subjects the business of the company to legislative control in the interest of the public, confers upon the State Legislature the power to regulate, control, burden or interfere with contracts made by a railroad company in so far as it respects its interstate business.

FARGO *v.* MICHIGAN, 121 U. S. 230, 243, 244.

In reply to a similar contention in that case, this Court said:

> "The proposition that the States can by way of a tax upon business transacted within their limits, or upon the franchise of corporations which they have chartered, regulate such business or the affairs of such corporations has often been set up as a defense to the allegation that the taxation was such an interference with commerce as violated the constitutional provision now under consideration. But where the business so taxed is commerce itself, and is commerce among the States or with foreign nations, the constitutional provision can not thereby be evaded; nor can the States, by granting franchises to corporations engaged in the business of transportation of persons or merchandise among

them, which is itself interstate commerce, acquire the right to regulate that commerce, either by taxation or in any other way."

II.

The Supreme Court of Georgia, in support of its decision in this case, cited the case of Richmond Railroad Co. *v.* Tobacco Company, 24 Southeastern Rep., p. 261.

The question presented by the record in this case was not before the Supreme Court of Virginia in that case, for in that case it was conceded by the Supreme Court of Virginia that any attempt on the part of the State to prohibit the carrier as to interstate shipment from limiting its liability to its own line would be a regulation of interstate commerce, and therefore void.

The material part of the statute which the Supreme Court of Virginia had before it in that case, and on which the Supreme Court of that State rendered the decision referred to, is quoted in full on page 312 of the 169th United States Report. It will be seen by an examination of the provisions of that statute it provided for two things: First, when a common carrier accepts for transportation anything directed to a point or destination beyond the terminus of its own line or route, he should be deemed thereby to have assumed the obligation for its safe carriage to the destination, unless at the time of such acceptance such carrier be released from such liability by a contract in writing signed by the owner or his agent.

In that case the contract of carriage was not executed in conformity to the requirement of the statute, and the Supreme Court of Appeals of Virginia held that it was competent for the Legislature to prescribe the manner in which contracts should be made in reference to the trans-

portation of freight by railroad companies, whether intra or interstate.

It was further provided in the statute that "although there be such contract in writing, if such thing be lost or injured, such common carrier shall himself be liable therefor, unless in a reasonable time after demand made he shall give satisfactory proof to the consignor that the loss or injury did not occur while the thing was in his charge."

The Supreme Court of Appeals of Virginia held that this was a proper regulation by the State of Virginia.

That case on writ of error came to this court, and was decided in 169 U. S., p. ~~309~~ 311.

On the subject of whether the Legislature of the State of Virginia could prohibit a carrier as to an interstate shipment from limiting its liability to its own line, the court said:

> "The Supreme Court of Appeals of Virginia, in its able opinion, and the counsel of both parties at the bar, conceded that an attempt on the part of the State to prohibit a carrier as to an interstate shipment from limiting its liability to its own line would be a regulation of interstate commerce, and therefore void."

This court further said:

> "It is manifest that the statute of the State of Virginia in question does not attempt to substantially regulate or control contracts as to interstate shipments, but simply establishes a rule of evidence ordaining the character of proof by which a carrier may show that, although it received goods for transportation beyond its own line, nevertheless, by agreement, its liability was limited to its own line. That

this is the sole purpose of the statute seems too plain for anything but statement. It leaves the carrier free to make such limitation as to liability on an interstate shipment beyond its own line as it may deem proper, provided only the evidence of the contract is in writing and signed by the shipper."

The law of the State of Georgia authorizes a carrier to receive an interstate shipment and make a contract limiting its liability to its own line. The law does not require that the contract be in writing, but in this case the contract was in writing, and signed by the shipper and by the agent of the Central of Georgia Railway Company, as will be seen by reference to pages 35, 36 and 37 of the Record.

The Tracing Act, contained in section 2317 of the Code of Georgia, *supra*, recognizes the right to make such contracts, and their validity, but adds thereto a burden in case the property shipped is lost or damaged, which, if enforced, practically denies the right of the carrier to make a contract in respect of interstate shipments and limit its liability to its own line.

On the second clause of the statute of the State of Virginia, hereinbefore referred to, which simply required a carrier in case shipments were lost or injured, on demand of the consignor, to give satisfactory proof to him that the loss or injury did not occur while the thing was in its charge. This court said in regard to this provision of the statute that such a regulation was in the power of the State to adopt. The requirement of the Virginia statute that the carrier should give to the consignor satisfactory in-

formation that the loss did not occur on its line, could be easily complied with by calling upon its own employees, who could show delivery of the freight to the next connecting carrier in good order. Not so with the statute of Georgia. It recognizes the right to make such a contract. Indeed, the statute applies only where such a contract is made. Yet, it requires the carrier, not to give satisfactory proof that the damage did not occur on its line, but to ascertain when, where, how, and by which carrier beyond its line the freight was lost, damaged or destroyed, and the names of the parties, and their official position, if any, by whom the truth of the facts set out in said information can be established. The requirement of the Virginia statute was that the carrier receiving the goods should give information that the damage did not occur on its line, while the requirement of the Georgia statute is that the carrier must ascertain on what other line than its own the damage or loss occurred; and not only does it require this, but it requires the carrier to show when, where, how, and by which carrier such freight was lost, damaged or destroyed: and also requires the initial carrier to procure the names of the parties, and their official position, if any, by whom the truth of the facts set out, in reply to the shipper's notice to trace, can be established.

To comply with this statute the carrier would be compelled to send employees with every interstate shipment from the end of its own line to destination, and watch the shipment, so as to ascertain when, where, how, and by which carrier the freight was lost or damaged, and make an investigation and ascertain what employees of the carrier on whose line the freight was lost or destroyed knew of such loss or damage, and furnish the shipper with the names of each, and the official position of the witnesses, if any. For in no other way could the initial carrier procure

the information required by the statute. The record in this case shows that an honest effort was made to ascertain when, where, how, and by which carrier the grapes were damaged, but it was unable to get that information. The plaintiff in error offered to prove by its claim agent that it was utterly impossible to get up the required information within the time limit prescribed in the statute. More will be said in reference to this proffered evidence, which was rejected, in connection with another branch of this argument.

III.

The Supreme Court of Georgia cited, in support of that part of its decision in which it is held that the enforcement of the statute in question did not interfere with interstate commerce, the following authorities, in addition to the case in the 169th U. S., above referred to, to wit: Sherlock *v.* Alling, 93 U. S. 99; Smith *v.* Alabama, 124 U. S. 465; Chicago Railway Co. *v.* Solan, 169 U. S. 133; St. Joseph Railroad Co. *v.* Palmer (Neb.), 22 L. R. A. 335; Hart *v.* Railway Company, 69 Iowa, 485; Gulf Railroad Co. *v.* Crossman (Tex.), 33 S. W. 290; Williams *v.* Fears, 110 Ga. 584, affirmed in 179 U. S. 270.

Sherlock *v.* Alling, 93 U. S. 99, arose under a statute of Indiana, which provided that "when the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefor against the latter if the former might have

maintained an action, had he lived, against the latter for an injury for the same act or omission."

Sherlock and others were engaged in carrying passengers, freight, etc., by boat from Cincinnati to Louisville, and there was a collision between two boats in the river, and one Sappington, a passenger, a citizen of Indiana, was killed. The collision which resulted in the death of Sappington was within the territorial jurisdiction of Indiana, that is, above the line of low water-mark of the river; and it was held by this court that the statute of Indiana, *supra*, did not in anywise interfere with interstate commerce, and the plaintiff in the case had the right to locate the suit in the State of Indiana. This court, after quoting from some of its decisions in which it had been held that certain State laws interfered with interstate commerce, said, p. 103:

> "In the present case no such operation can be ascribed to the statute of Indiana. That statute imposes no tax, prescribes no duty, and in no respect interferes with any regulation for the navigation and use of vessels. It only declares a general principle respecting the liability of all persons within the jurisdiction of the State for torts resulting in the death of parties injured. And in the application of the principle it makes no difference where the injury complained of occurred in the State, whether on land or on water."

In the case at bar, the statute of the State of Georgia does prescribe a duty for carriers engaged in carrying interstate commerce, and enforces that duty by imposing a "penalty" upon a carrier who fails to comply with the statute.

Smith *v.* Alabama, 124 U. S., *supra*, arose under a statute of that State which required locomotive engineers in the State to be examined and licensed by a board to be appointed for that purpose, and provided that it should be unlawful for an engineer of any railroad train in the State of Alabama to operate an engine upon the main line or road-bed of any railroad which is used for the transportation of passengers or freight, without first undergoing an examination and obtaining a license as therein provided; and prescribed a penalty to be inflicted upon any one operating an engine who failed to be examined and obtain such license. One Smith was arrested on the charge of violating the statute, and he sought to be discharged from the custody of the sheriff of Mobile county on a writ of habeas corpus, which was denied him. By writ of error the case was carried to the Supreme Court of Alabama, where the judgment below was affirmed and he prosecuted a writ of error to this court. It appeared that Smith was engaged in running an engine between Mobile, Alabama, and Corinth, Mississippi, and he claimed that the act was an interference with interstate commerce. This court affirmed the judgment of the Supreme Court of Alabama, and held that the law of Alabama in question:

> "Was an Act of legislation within the scope of the powers reserved to the States, to regulate the relative rights and duties of persons within their respective territorial jurisdictions, being intended to operate so as to secure safety of persons and property for the public; that so far as it affected transactions of commerce among the States, it did so only indirectly, incidentally and remotely, and not so as to burden or impede them."

The object of the requirement that engineers engaged

in operating locomotives should be examined and should take out a license before being permitted to operate a locomotive, was to compel railroads to procure fit and proper persons for this duty, and it was really in aid of interstate commerce, and did not burden or impede in any manner transactions of commerce between the States. But not so with the Georgia statute, as it could not be applied to an interstate shipment without placing upon the carrier engaged in interstate commerce a burden, and as we think, an onerous burden.

Chicago, Milwaukee and St. Paul Ry. Co. *v.* Solan, 169 U. S. 133, arose under a statute of the State of Iowa, which is as follows:

> "No contract, receipt, rule or regulation shall exempt any corporation engaged in transporting persons or property by railway from liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule or regulation been made or entered into."

One Solan accompanied a shipment of cattle from Rock Valley, Iowa, to Chicago, Ill., and while in the State of Iowa, between Boyden and Sheldon, in Iowa, it was alleged that the train was derailed by the negligence of the employees of the company. The case finally came to this court, and this court held that the statute in question affirms and extends the common law rule of liability to a carrier of persons or property, regardless of any contract that might be made between the carrier and the shipper which would have the effect to change such rule of liability; and on that ground upheld the legislation in question.

This court further said, p. 135:

> "By the law of this country, as declared by this court, in the absence of any statute controlling the subject, any contract by which a common carrier of goods or passengers undertakes to exempt himself from all responsibility for loss or damage arising from the negligence of himself or his servants is void as against public policy, as attempting to put off the essential duties resting upon every public carrier by virtue of his employment, and as tending to defeat the fundamental principles on which the law of common carriers was established—the securing of the utmost care and diligence in the performance of their important duties to the public."

In that case the shipment was from Rock Valley, Iowa, to Chicago, Ill., over the rails of the Chicago, Milwaukee & St. Paul Ry. Co., and the contract of the railway company was to deliver the shipment at Chicago, and the loss complained of was the result of the negligence of that railway company.

The case at bar does not present any such question. In the case at bar there was no negligence charged to the Central of Georgia Ry. Co., nor was there any contract or attempt to make a contract to exempt the railway company from liability from injuries or damages arising from its negligence, or the negligence of its employees; it simply contracted, as it had the right to do, to deliver to the next carrier and limit its liability for loss or damage to its own line.

St. Joseph & Grand Island R. R. Co. *v.* DeWit W. Palmer, 22 L. R. A. 335, s. c. 56, N. W. 957.

In that case a shipment was received by the St. Joseph & Grand Island R. R. Co. for transportation from Hastings, Neb., to Grant's Pass, Oregon. The railway company issued a bill of lading for carriage from Hastings, Neb., to destination. There was inserted in the bill of lading a stipulation that the initial carrier should not be liable beyond its own line. It was insisted by the shipper that there was a parol agreement in respect of the shipment, that the goods were put into the cars of the railway company, and subsequently the railway company handed to the shipper a bill of lading and requested him to sign the same in duplicate. He claimed that, relying upon the parole agreement, he signed the bill of lading without knowing that it contained a stipulation to the effect that the railway company would not be bound for damages or loss beyond its own line.

The statute of Nebraska provides that

> "No notice, either express or implied, shall be held to limit the liability of any railroad company as common carriers unless they shall make it appear that such limitation was actually brought to the knowledge of the opposite party and assented to by him, or them, in express terms before such limitation shall take effect."

The shipper in that case insisted that he did not know the stipulation was contained in the bill of lading, nor was his attention called to it. That was one of the issues submitted by the trial judge to the jury, to wit:

> "Under the laws of this State (meaning Nebraska) no limitation upon the liability of a common carrier can be imposed, except upon proof that such limitation had been called to the attention of the shipper and by him expressly assented to."

The court submitted to the jury to find whether or not the attention of the shipper had been called to the limitation of liability set out in the bill of lading, and whether the shipper's assent was obtained. The jury found that the shipper's attention had not been called to limitations contained in the bill of lading, and found for the plaintiff the value of the goods that were lost in transit.

It is true that the goods shipped were lost beyond the line of the initial carrier, and it is true that the initial carrier issued a bill of lading for the transportation of the goods over its line and other lines, naming them, but it is also true that the attention of the shipper was not called to the limitations contained in the bill of lading, and he did not expressly assent thereto. The Supreme Court of Nebraska, therefore, held that under the statute of that State the carrier was liable for the loss of the goods, though lost on the line of another railroad. The statute of Nebraska does not deny to the carrier the right to issue a bill of lading for the transportation of goods from a point on its line to destination on the line of another railway company in another State, and make a contract limiting liability to its own line, but merely prescribes how such contracts shall be made.

In Hart *v.* Railway Company, 69 Iowa 485, s. c. 29, N. W. 597, the statute of Iowa, above quoted and referred

to by this court in 169 U. S., *supra*, was passed upon by the Supreme Court of Iowa.

In that case Hart shipped a carload of horses from Des Moines, Iowa, to the town of Miller, in Dakota Territory; and when the train reached Bancroft, in the State of Iowa, the car in which the horses were caught on fire, and the horses were destroyed by the fire. The shipper made a contract with the railway company limiting its liability to a certain amount on the shipment, and there was no effort on the part of the railway company to limit liability to its own line. In point of fact, however, the damage occurred on its own line. The Supreme Court of Iowa held that the statute above referred to prevented the making of such a contract, because under the common law the carrier would be liable for the full value of the property when lost, if liable at all. It is true that the Supreme Court of Iowa held that the statute in question would be good when applied to an interstate shipment. It is very plain, however, that the court referred to the duty of the carrier under obligation either at common law, or by implied contract, to carry to destination, for that court said the statute means:

> "He is forbidden to make any contract that will exempt him from any of the liabilities which arise by implication for his undertaking to carry the property. But no burden is placed upon the property which is the subject of the contract, nor in any rule prescribed for his government respecting it."

We think the meaning of the statute which was under consideration in that case, as construed by the Supreme Court of Iowa, and by this Court in 169 U. S. *supra*, is, that where a carrier undertakes by contract to deliver on its own line, it would under the common law be liable to any injury or damage, and where the carrier impliedly con-

tracts to deliver to destination on another line, it makes such other line its agent, and it is responsible for damage to, or loss of, the thing that may occur on such line, and against such liability the carrier could not contract. But these decisions do not deny the right of a carrier to receive freight under a contract to carry to the end of its line, there deliver to the next carrier in good order, and limit liability to its own line.

In support of our construction of the Iowa statute, we call attention to a similar statute of Missouri, which was considered by the Supreme Court of Missouri, and also by this Court, in Missouri, Kansas & Texas Ry. Co. *v.* McCann, 174 U. S. 580, to wit:

> "Whenever any property is received by a common carrier to be transported from one place to another, within or without this State, or when a railroad or other transportation company issues receipts or bills of lading in this State, the common carrier, railroad or transportation company issuing such bill of lading shall be liable for any loss, damage or injury to such property, caused by its negligence or the negligence of any other common carrier, railroad or transportation company to which such property may be delivered, or over whose line such property may pass."

While the statute was in force the railway company received a shipment of cattle from Stoutsville, Missouri, the initial point on its line, to Chicago, Ill., which was beyond its line, and issued a bill of lading to transport and deliver at destination. At Hannibal, Mo., the cattle were de-

livered to the Wabash Railway, destined for Chicago. While the cattle were in the possession of the Wabash Company, near Chicago, an unreasonable delay was occasioned by the negligence of the employees of the company, resulting in damages to the cattle, for which the shippers brought an action against the initial line to recover for a breach of the contract of shipment, and obtained judgment. The case went to the Supreme Court of Missouri, and is reported in 133 Mo. 159. The case came to this court on a writ of error to the Supreme Court of the State of Missouri.

The Supreme Court of Missouri in construing the statute in question, said:

> "The provision of the statute is that 'whenever property is received by a common carrier to be transferred from one place to another.' This language does not restrict, but rather recognizes the right of the carrier to limit its contract of carriage to the end of its own route, and there deliver the property to the connecting carrier.
>
> "There can be no doubt, then, that under the statute, as well as under the English law, the carrier can, by contract, limit its duty and obligation to carriage over its own route."

This court, in passing upon the interpretation placed by the Supreme Court of Missouri on the statute in question, said:

> "Analyzing the opinion of the court, it results that the court decided that whilst the statute left a railway company ample power to restrict its liability by contract, both as to carriage and as to liability for negligence, to its own line, the purpose em-

> bodied in the statute was to regulate the form in which the contract should be expressed, so as to require the carrier to embody the limitation directly and in unambiguous terms in the portion of the agreement reciting the contract to transport, and not to import or imply such limitation by way of exception or statements of conditions and qualifications, requiring on the part of the shipper a critical comparison of clauses of the contract, in order to reach a proper understanding of its meaning. That is to say, that the restraint imposed by the statute was not a curtailment of the power to limit liability to the line of the carrier accepting freight, but a regulation of the form in which the contract having that object in view should be drawn."

Further on this subject, this court said, p. 588:

> "If the bill of lading in the case before us did not contain a positive statement of an obligation by the receiving carrier to transport from the point of shipment to the ultimate destination of the cattle, of course it would not come under the control of the statute. But as, on the contrary, the contract contains an expression of such obligation, limited by reference solely to subsequent conditions inserted in the bill of lading, it is plainly brought within the import of the statute as interpreted by the Missouri Court."

This case, we think, is decisive of the case at bar, for in the contract of carriage in this case, i. e., the bill of lading, Record p. 35, it is plainly and distinctly stated that the plaintiff in error accepted the goods, routed over sev-

eral lines from Barnesville, Ga., to Omaha, Neb., but stipulated that it agreed to carry to destination if on its road, or deliver to another carrier on the route to said destination, subject in either instance to the conditions named below in the bill of lading. Among them is condition 5, hereinbefore quoted, which plainly says that the liability of the initial and each carrier shall cease as soon as delivery is made to the next carrier; and that it would not be responsible or liable for any act, omission or negligence of the other carriers. The bill of lading, a printed form, uses the words: "agrees to carry to destination, if on its road, or deliver to another carrier on the route to said destination."

Omaha, Neb., is not "on its road," which was known to both parties, and the contract as understood by both parties thereto was to carry to the end of the line of the plaintiff in error, and there deliver to the next carrier, and liability was expressly limited to its line. Indeed, this contract of shipment was recognized by the shipper and by the Supreme Court of Georgia to be a valid and binding contract under the laws of Georgia for carriage to the end of the line of the initial carrier, and limiting liability of the initial carrier to its own line. This being true, then under the decision in 174 U. S., *supra*, this carriage could not be brought under the control of the Statute of Georgia, the enforcement of which would impair the contract right of the carrier to carry to the end of its line and there deliver to a connecting carrier, and by contract exempt itself from liability for loss or damage on another line.

GULF, COLORADO & SANTA FE R. R. CO. *v.* CROSSMAN, *et al.*

Court of Civil Appeals of Texas, 33 S. W. 290.

This case was cited by the Supreme Court of Georgia in support of its contention that a Texas statute similar to the Georgia statute in question had been held by the Court of Civil Appeals of Texas "not to encroach upon the right of Congress to control commerce among the several States."

That case arose in this wise: The railway company received two bales of cotton from Crossman & Brothers at Ladonia, Texas, to be shipped to New Orleans. The railroad company issued its bill of lading for the cotton and indicated the lines over which the cotton was to pass, and carried the cotton to a point on its line known as Honey Grove, and there delivered it to the next connecting carrier, the Texas & Pacific Railroad Company, to be transported to New Orleans. The bill of lading provided that,

> "For all loss or damage occurring in the transit or custody of said packages, the legal remedy shall be against the particular carrier only in whose custody said packages may actually be at the time of the happening thereof, it being understood that the Gulf, Colorado & Santa Fe Railroad Company, in receiving the said packages to be forwarded as aforesaid, assumed no further responsibility for their safety or safe carriage than may be shown to have occurred on their own road."

The law of Texas forbade a common carrier to make a

contract limiting its liability, and the trial court held that the initial carrier was liable for loss of the cotton which occurred after it left the rails of the initial carrier. The Civil Court of Appeals reversed the judgment of the court below and held that,

> "The shipment was an interstate shipment, and therefore not subject to regulation by the laws of the State (meaning Texas), and the defendant railway company had the right to limit its liability to damages occurring on its own line."

Williams *v.* Fears, 110 Ga. 584, arose under a statute of the State of Georgia, which provided that before any person shall engage in the business of an emigrant agent he shall register his name as such, and place of business, and pay the prescribed license tax to the proper officer; and failing to do, such person shall be guilty of a misdemeanor. One Williams was arrested for an alleged violation of these provisions of the statute of Georgia, and he applied for a writ of habeas corpus, and alleged several reasons why the Act in question was violative of the provisions of the Constitution of the United States, and also of the Constitution of the State of Georgia. The superior court, to which application for writ of habeas corpus was made, denied the writ, and by writ of error the case was carried to the Supreme Court of the State, where the judgment of the court below was affirmed. Williams, by writ of error, brought his case to this court, where it was decided and reported in 179 U. S. 270.

This court held that the levy of a license tax did not amount to such an interference with the freedom of transit or contract as to violate the Federal Constitution.

On the question of whether the statute in question affected interstate commerce, this court said:

> "These labor contracts were not in themselves the subject of traffic between the States, nor was the business of hiring laborers so immediately connected with interstate transportation or interstate traffic that it could correctly be said that those who follow it were engaged in interstate commerce, or that the tax on that occupation constituted a burden on such commerce."

In other words, it was therein held that Williams was not engaged in interstate commerce; while in the case at bar it will not be disputed that the Central of Georgia Railway Company was engaged in carrying commerce between the States.

None of the cases cited by the Supreme Court of Georgia in support of its conclusion, in our opinion, bear upon the real question in this case. The real question in this case is, whether, after the Central of Georgia Railway Company had issued a through bill of lading, obligated itself to deliver to the next carrier, and by express contract limited its liability to its own line, it can be required, at its own expense, to follow up the shipment, and ascertain when, where, how, and by whom the freight was damaged, with the names of the persons by whom the facts could be established, and their official position, if any. There is nothing in the decisions cited by the Supreme Court of Georgia which denies the right of the carrier to contract to carry to the end of its line and there deliver to a connecting carrier, and contract to limit its liability to its own

line, although it may issue a bill of lading showing the routing of the shipment from the initial point to destination, and the carriers over whose lines the shipment will move.

Those decisions hold, in construing the statutes of the States of Iowa and Missouri, first, that it is not in the power of the carrier to contract against liability for loss occurring on account of the negligence of the carrier or its agents. Second, where a carrier contracts to carry to destination over its own and connecting lines, it is liable for loss or damage to the goods wherever the same may occur.

This court, in 169 U. S., *supra*, held that a contract which exempted a common carrier from all responsibility for loss or damage arising from the negligence of himself or his servants, was, in the absence of a statute, void as against public policy. The court evidently referred to such contracts as related to loss or damage on the line of the carrier where a contract is made for delivery at destination on another line, treating the act of the carrier in that instance as making the connecting lines its agents. But this court, we apprehend, did not mean to hold that a bill of lading might not be issued by a carrier for goods passing to destination on the line of another carrier, and contract against liability for loss on the other lines. But if such is the meaning of the decision, it does not apply in this case as the statute of the State of Georgia provides that such contracts may be made.

Section 2276 of the Civil Code of Georgia of 1895 is as follows:

> "Section 2276. *Effect of notice to limit.* A common carrier can not limit his legal liability by any notice given, either by publication or by entry on

> receipts given, or tickets sold. He may make an express contract, and will then be governed thereby."

It has been repeatedly held by the courts of Georgia that this statute authorizes a carrier to issue a bill of lading from initial point to destination on the line of another carrier, and by contract limit its liability to its own line.

> Central Railroad *v.* Avant, 80 Ga. 195.
> Richmond & Danville R. R. Co. *v.* Shomo, 90 Ga. 496.

In the decision of the case at bar, the Supreme Court of Georgia say:

> "It may, however, make a contract for the transportation of goods beyond the terminus of its own line, and stipulate in such contract that its liability shall cease when the goods are delivered to the next carrier, thus making itself liable only for damages or loss occurring while the goods are in its possession."

It will thus be seen that the laws of Georgia authorize a contract limiting liability where the carrier has contracted to transport goods beyond its line. In the case at bar, the contract was not to transport to destination, but to transport to destination if it be on the line of the plaintiff in error, but if not on its line, then deliver to the next connecting carrier.

The Act of the Legislature of Georgia in question does not deny the right of the carrier to make a contract to carry to the end of its line and limit liability to its own line in

an interstate shipment, a thing it could not do, in our opinion, in reference to an interstate shipmeut, but it fully recognizes the validity of such a contract, and superadds a duty and liability utterly inconsistent with the duties and liabilities assumed by the carrier in its contract of shipment; and therefore must necessarily, when enforced, as was done in this case, take away from the carrier the right of contracting to carry an interstate shipment to the end of its line, and the right to contract for exemption from liability for a loss which may occur beyond its line, as effectually as if the Act had expressly provided that a carrier could not make such a contract.

While the Supreme Court of Georgia, in the case at bar, recognizes the right of the carrier to contract to carry an interstate shipment to the end of its line and there deliver to another carrier, and limit its liability to its own line, at the same time it reached the conclusion that such contract should not be enforced. The court, after stating that in order to secure business to be transported to distant points, it was necessary that the carrier should have traffic arrangements with connecting lines by which the shipper could be entitled to a through bill of lading securing transportation on all lines from the initial point to destination, said:

> "Especially is this true in regard to goods of a perishable nature. A carrier which holds itself out to carry such goods would secure little custom from shippers of that class of goods unless it were in a position to give reasonable assurance that the goods would not be subjected, at the terminus of the initial carrier's line, to the delays incident to shipments upon a bill of lading the undertaking of which is accomplished when the goods reach the terminus of the first carrier."

The carriers do not refuse to issue bills of lading from the initial point to destination, designating the different carriers, when necessary, but it does claim the right to refuse to contract to deliver at destination, and claims the right to contract to limit liability to its own line. The court overlooked the difference between a bill of lading under which a shipment would not move beyond the line of the initial carrier, and a bill of lading under which a shipment moves from initial point over several lines to destination, and which contains a contract limiting the liability of the initial carrier to its own line.

IV.

REQUIREMENT OF STATUTE UNREASONABLE.

If such legislation as that in question could in any event be enacted, so as to affect contracts for interstate shipments, it must be a reasonable, and not an unreasonable, requirement of carriers engaged in interstate commerce.

In our opinion, the legislation in this case is an unreasonable interference with the rights of carriers engaged in interstate commerce, and is for that reason void.

> C. C. & St. L. R. R. Co. *v.* Illinois, 176 U.S. 514; and cases therein cited.

The Supreme Court of Georgia, in discussing this view of the case, proceeded upon the idea that the railway com-

panies were compelled to issue bills of lading for through carriage to distant points in order to get any business whatever, and the court states that if the carrier should adopt a rule of issuing a bill of lading only to the end of its line, it would do little business in the transportation of goods to distant points, especially where there were other competing carriers who would issue bills of lading to points beyond their own lines. It may be true that if one carrier should refuse to issue bills of lading beyond its own line, and other carriers should issue through bills of lading, that those refusing to issue through bills of lading would not get much patronage as to shipments going beyond its own line. But it is also true that if it be held that a carrier can not issue a bill of lading from the initial point to destination, and stipulate therein to carry to the end of its line and there deliver to the next connecting carrier, and that it would not be liable for loss or damage beyond its own line, then all the carriers will, we doubt not, be forced to adopt a rule of issuing bills of lading to the end of its line; and if this is done the shipper of freights would be put to great inconvenience and trouble, and shippers of perishable freights, such as vegetables, fruits, melons, etc., will be deprived of the present privilege of getting their products into distant markets.

The court then proceeds to say that inasmuch as it is often to the interest of the carrier to issue a through bill of lading in order to secure business, and the law allows the carrier in such cases to limit liability for loss or damage while on its own line, it is not an unreasonable requirement when, under such circumstances, a loss occurs beyond its own line that the initial carrier shall, upon demand, furnish the shipper, within a reasonable time, information as to the place where the loss or damage occurred.

This view of the Court we think is erroneous for two reasons:

First, if by contract the carrier can, in respect of interstate shipments, limit liability to its own line, then surely the Legislature can not add a burden upon the carrier not provided for in the contract, by legislation which affects it either directly or indirectly.

Second. The court say it will not be an unreasonable requirement for the carrier to furnish on demand to the shipper "within a reasonable time information as to the place at which the loss or damage occurred."

Such is not the requirement of the statute; it specifically provides that the carrier shall trace the shipment, in case the freight is lost, damaged or destroyed, and "inform the applicant, in writing, when, where, how, and by which carrier said freight was lost, damaged or destroyed, and the names of the parties and their official position, if any, by whom the truth of the facts set out in said information can be established."

It will be seen that the statute requires much more at the hands of the carrier than is stated by the Supreme Court of Georgia to be reasonable in the language above set out. We by no means admit, that, if the statute required no more than the Supreme Court has stated in the language above quoted, it would be reasonable.

The Court further say:

> "Carriers, through business arrangements with the connecting carriers, are so intimately associated with each other, and each one is so thoroughly conversant with the systems of the others, that it is much easier for a carrier to obtain this informa-

tion than a shipper. In fact, it is a practical impossibility in many instances for the shipper to obtain the information himself, and a refusal or failure on the part of the initial carrier, or one of the connecting carriers, to undertake to locate the point at which the loss or damage occurred, amounts practically to a denial of redress to the shipper of goods that have been lost or damaged."

Those who are familiar with the transaction of railroad business need not be told that all the facilities which a carrier has for ascertaining the facts about the miscarriage of freights, injury of freights, loss or damage to freights, are readily and promptly exercised at the instance of one of its patrons. While it may be true that a shipper may not be able to obtain information about the loss of, or damage to, his goods, yet it is true that the shipper can make the inquiry through the carrier, and we undertake to say that no carrier would refuse to ascertain and give to the shipper all the information that could be obtained by the carrier as to the loss of or damage to his freight. By the uniform practice of railroads in this regard, shippers are enabled to get all information that the railway companies can obtain, and without charge.

The Supreme Court of Georgia say, however, that because the shipper can not by initiating an investigation of his own—although he can, as is done daily, initiate an investigation through the initial carrier—it is not unreasonable for the carrier to be required to make the investigation set out in the statute, and make a report, and on failure to give the information within a definite time, to become responsible as though the damage or loss had occurred on its line.

The court say, in support of its views on the subject:

> "The right to control by legislative enactment in the interest of the public a corporation of this character is unquestioned, and in the legislative control of the character indicated in the law now under consideration we see nothing unreasonable or arbitrary."

And the court cites the case of Richmond Railroad Co. *v.* Tobacco Co., 24 S. E., 261; s. c., 169 U. S. 311, hereinbefore referred to.

We can not see that the case cited by the Supreme Court of Georgia in anywise justifies the conclusion that said decision is authority for the contention that the Legislature may pass an Act requiring carriers, who make contracts to carry to the end of their lines and limit liability to their own line, in accordance with the laws of the State, to perform a duty in and about the carriage of interstate freight after it leaves the line of the initial carrier and passes beyond the limits of the State, and on failure to perform such requirement, within the time specified, make the carrier responsible for the loss.

In the Virginia case the provision of the statute was that,

> "If a carrier accepts for transportation freight directed to a point or destination beyond the terminus of its own line or road, it shall be deemed thereby to assume an obligation for the safe carriage to such point or destination, unless at the same time such carrier be released or exempted from such liability by a contract, in writing, signed by the owner or his agent; and although there be such contract, in writing, if such thing be lost or injured, such com-

> mon carrier shall himself be liable therefor, unless within a reasonable time after demand he shall give satisfactory proof to the consignor that the loss or injury did not occur while the thing was in his charge."

In that case the legislative provision was not unreasonable, for it only required that the carrier should give to the consignor on demand satisfactory proof that the loss or injury did not occur "while the thing was in its charge." Such is not the Georgia statute. The Georgia statute aims at loss or damage when the freight lost or damaged is not in the charge or in the care of the initial carrier. In complying with the Virginia statute a carrier could very easily give the information by calling on its employees; but in carrying out the requirements of the Georgia statute the carrier has to obtain the information from the agents and employees of other carriers, over whom it has no control whatever, and no power to coerce a statement from them.

It is demonstrated by the records in this case, we think, that the carrier could not obtain the information required by the Georgia statute by correspondence, and in order to give that information the carrier would have to send with the shipment an agent to inspect it when it passed from one carrier to another, or have persons employed at these different places to inspect it to see if it had been damaged.

If the legislative Act in terms required the carrier to have the shipment accompanied by an agent, or have agents stationed at points where the shipment changes from one carrier to another, to get up information of the kind called for by the Georgia statute, certainly no court would hesi-

tate to declare it void as an interference with interstate commerce.

The Georgia statute does not, in express terms, require this to be done, but in effect it does, because it makes a requirement which can not be met except in the manner above indicated.

The trial court rejected all the evidence defendant tendered for the purpose of showing that it had in good faith endeavored to comply with the requirements of the statute, and that it was impossible to do so. See Record, pp. 20 to 34, inclusive.

The court below rejected this evidence upon the ground that the carrier having failed to obtain the information within the time required by the statute, it could not be heard upon any question of the exercise of diligence, good faith, or the impossibility of obtaining the evidence within the prescribed time, and it was, therefore, liable to the plaintiff for the damage done to the goods, which occurred at the hands of another carrier in another State. See 5th Ground of Motion for New Trial, beginning on page 18 and ending on page 19 of Record.

Error was assigned on this ruling of the trial court, and the ruling was affirmed by the Supreme Court of Georgia. The Supreme Court of Georgia said:

> 'Of course, if an Act of the General Assembly imposes a penalty upon an individual or corporation for a failure to perform a given act within a given time, and it is manifest that the character of the act is such that the courts could take judicial notice that it could not be performed within the time required, then it would be the duty of the courts to declare such legislation invalid as an effort on the part of the lawmaking body to deprive a person of his property without due process of law."

It will be seen that the decision of the Supreme Court of Georgia is, that the carrier could not be excused for not complying with the statute in question, regardless of what evidence might be offered to show impossibility of compliance therewith, unless the character of the requirement was such that the courts could take judicial notice that it could not be performed within the time required. We think it is impossible for the court to take judicial cognizance of whether the carrier could or could not comply with the requirements of the act in question, and therefore it is a question of evidence, and we had the right to show, as we could have done, that it was impossible to get the information called for within the time limit specified in the statute.

The Supreme Court of Georgia further say:

> "In these days, when it is a matter of such common knowledge that the courts judicially know that railroad companies engaged in the transportation of persons and freight among the several States conduct their business with such facility by means of the telegraph and other agencies, that when it becomes necessary in their own interest to secure information in regard to the commonest details of the simplest transaction, they can do so in a very short space of time, a court would stultify itself that would hold as a matter of law that thirty days was not a reasonable time for a carrier whose principal office was in Georgia to secure information as to where a carload of grapes was lost or damaged which was transported from a point in this State to Omaha, Nebraska."

We do not know how the court reached the conclusion that it is "common knowledge" that a carrier can, by the

use of the telegraph and other agencies, secure information in regard to the "commonest details of the simplest transaction" in a very short space of time. We, who are so unfortunate as to represent railway companies, know that the learned court took an erroneous view of this subject. It may be that a railway company can, by a telegram, get information from another line, if it is to the interest of such line to give the information, but we know that if it is not to the interest of the other line to give the information, that it can not readily be gotten. We take the liberty of stating some things which are of common knowledge to persons who are familiar with transactions between railroad companies. We know that if a railroad company in Georgia wishes to get information from a railroad company in Illinois or Nebraska, in regard to a matter that would be to the interest of that company, the answer would be prompt. We also know that if we wish information which is not to the interest of the company of whom the inquiry is made to give, it is not given. If we wish information touching a subject which may develop liability, or the shortcoming in anywise of the railroad company applied to, it is not given promptly, and very frequently not given at all. Stacks of copies of communications, signed by railway companies making inquiries of other railway companies, about the failure to deliver freights, misrouting of freights, and the damage, loss or destruction of freight, which have not been answered, or if answered at all, answered evasively, are piled up in every railroad office in this country. It is often the case that railway companies have to resort to people disconnected with railroads, or send a special agent, to get the information necessary to support a claim against another railroad company. It is, therefore, not a matter of common knowledge that railway companies can "secure information in regard to the commonest details of the

simplest transaction in a very short space of time." But railroad people, and when we say railroad people, we mean the executive officers, the accounting departments, and the legal departments, know that information can not readily be gotten from a railroad company which will establish its shortcomings.

The testimony offered in the court below, Record pages 20 to 30, both inclusive, demonstrates the truth of our statement. Telegram after telegram was sent making inquiry about this shipment, when, where and how the same was damaged, and urging prompt answers, but the answers were of such a character as to give no definite information on the subject, and we offered to show the information, such as we had, which indicated that a certain carrier might be liable, to wit: the report of M. L. Becker, freight claim agent of the Wabash, on pages 24 and 25 of the Record. But this information was not such as to enable the plaintiff in error to determine that the liability was with the railway company which was indicated by the correspondence to have been the last that had possession of the shipment while in good order, for in the report made by Mr. Becker, he says:

> "When the freight was received by the Wabash from the L. & N., freight apparently in good order."

If the freight was in good order at that time, the damage had not up to that time occurred, although it appears from that report that the drain-pipes had been filled with cinders.

The final report of the L. & N. company was not received by the plaintiff in error until November 22d, long after the time limit in the statute had expired. Record

page 21. And the report shows (see report of Yates, yardmaster of L. & N., which was enclosed in a communication of Compton, general freight agent of the L. & N., to Mr. Graham on November 18, 1897, page 21 of Record) that "freight was in apparent good condition when delivered at St. Louis."

It was impossible, therefore, for the plaintiff in error to get the information required by the statute, to wit: when, where, how, and by which carrier the freight was damaged, and the names of the persons by whom the information conveyed could be established.

In view of the efforts of the railway company in this case to obtain the information, we are constrained to say that the learned Supreme Court of Georgia was in error in concluding that it is a matter of "common knowledge" that railroad companies can get information in regard to the commonest details of the simplest transaction in which it is interested in a very short time.

V.

DUE PROCESS OF LAW.

Our contention before the Supreme Court of Georgia, and is in this court, that the statute in question fixes a liability as enforced by the Supreme Court, upon the plaintiff in error without due process of law.

We cited in support of this contention the case of Wallace *v.* Railway Co., 94 Ga. 732. That case arose upon a statute of the State of Georgia which provided that when

any railroad company shall discharge or remove any agent or employee, it shall be the duty of such company, when requested in writing by such discharged agent or employee, to give a specific statement in writing, setting forth the reason or reasons which prompted, caused or induced such discharge or removal, and where such discharge or removal had been made on any complaint or communication made to the employer, it should be the duty of the company to inform the discharged agent or employee of the substance of such communication or complaint, and when and by whom such communication or complaint was made. It was further provided that on failure to give such statement when asked for, the employer shall be liable to the discharged agent or employee in the sum of five thousand dollars.

One Wallace was discharged by the Georgia, Carolina & Northern Ry. Co., and called upon the company for information touching his discharge. The railway company refused to give the information. Whereupon Wallace brought suit against the company for five thousand dollars. The case was carried to the Supreme Court of Georgia by Wallace, and is reported in 94 Ga. 732.

The Supreme Court decided that

> "Statements or communications, oral or written, wanted for private information, can not be coerced by mere legislative mandate at the will of one of the parties and against the will of the other. Compulsory private discovery, even from corporations, enforced, not by suit or action, but by statutory terror, is not allowable where rights are under the guardianship of due process of law."

That decision was made by a full bench, composed of three judges, neither of whom presided in the case at bar when it was before the Supreme Court of Georgia. The Supreme Court of Georgia disposed of this decision by saying that it had no application to the present case. No reason was assigned for the distinction between the case in 94 Ga., *supra,* and the case at bar. It may be true that a discharged employee, no longer connected with a railroad company, may stand upon a different footing in some respects from a shipper, i. e., the patron of a railroad company. But we think that the railway company in this case, when it had issued a bill of lading stipulating for carriage to the end of its line, and there deliver to the next connecting carrier, and by contract limited its liability to its own line, and delivered the freight to the next connecting carrier in good order, had no more legal connection thereafter with this shipment than did the railway company have with Wallace after it had discharged him.

The principle decided by the Supreme Court of Georgia in 94 Ga., *supra,* we think is pertinent to the question in hand, and a clear enunciation of a sound legal principle is found in the following language:

> "Statements or communications, oral or written, wanted for private information, can not be coerced by mere legislative mandate at the will of one of the parties and against the will of the other."

The statute in question provides for obtaining private information for the benefit of one whose goods have been lost or damaged, that he may use the same against another carrier, and it attempts to coerce such information by a legislative mandate which makes the initial carrier liable in case it fails to secure such information.

The court, in 94 Ga., *supra*, said:

> "Compulsory private discovery, even from corporations, enforced, not by suit or action, but by statutory terror, is not allowable where rights are under the guardianship of due process of law."

This principle, we say, is applicable to the question under consideration in the case at bar. The information asked for was private, i. e., private discovery. It was not enforced by suit or action to compel the plaintiff in error to discover under oath all the information it had touching the subject in hand, but it attempted to force plaintiff in error to discover information of others by statutory terror, i. e., make the plaintiff in error—the initial carrier—liable in case it failed to give the information called for. When the plaintiff in error delivered the shipment in this case to the next connecting carrier, which was done and not disputed, it discharged every duty it owed the shipper, and it was in no sense liable for the fate of the shipment after it left the rails of the plaintiff in error.

The plaintiff in error was under no contract obligation to respond to the shipper for any loss or damage the shipment might sustain on the line of other railway companies, and a statute under which the plaintiff in error can be made liable for such a loss effectually compels the plaintiff in error to pay the obligations and liabilities of another carrier, and is a denial of due process of law.

> "An Act of the Legislature which arbitrarily made one person liable for the debts, or responsible for the acts of another, would deprive him of due process of law."

Camp *v.* Rogers, 44 Conn. 291.

Colon *et al. v.* Lisk *et al.* (N. Y. Ct. Apps.), 47 N. E. 302.

People *v.* O'Brien *et al.* (N. Y. Ct. Apps.), 18 N. E. 692.

Towle ~~& Roper~~ *v.* H. Mann (Sup. Ct. Iowa), ~~& N. W. 814~~ 53 Iowa, 42.

The case of Ohio Railroad Co. *v.* Lackey, 78 Ill. 55, arose under a statute which required railroad companies to pay the cost of the inquest and the cost of the burial of persons who should die on their cars. The Supreme Court of Illinois decided this statute to be unconstitutional and void as denying to the railroad company due process of law; that it was an arbitrary requirement that the railway company should pay the expenses of the burial of persons who died on its cars without any fault or negligence on the part of the railroad company; that it made the railroad company responsible for the obligations of others. The principle and reasoning in that case, we think, is applicable to the case at bar.

BEILENBERG *v.* RAILWAY COMPANY, 20 PAC. REP., 314.

This case arose under a statute of Montana which provided that a railroad company when it had damaged or killed a horse should be liable therefor without reference to whether the corporation or its servants or agents were negligent in the act complained of. The court held that the Act was void in so far as it attempted to make a rail-

way company, not guilty of negligence, liable for the killing of an animal.

We are unable to distinguish the principle contained in the two above cases from the case at bar. In the case at bar, the grapes that were damaged were shipped from Barnesville, Ga., to Omaha, Neb., and delivered to the next connecting carrier in good order, as the record shows the plaintiff in error offered to prove—and shipped upon a contract which limited the liability of the plaintiff to injuries to the grapes on its own line; and it was not in any sense negligent in connection with the damage to the grapes.

The suit in this case is based upon the failure of the carrier to trace the grapes and give information as provided by the statute, which only applies to shipments where "under the contract of shipment, or by law, the responsibility of each or either shall cease upon delivery to the next in good order," and is an acknowledgment that the plaintiff in error delivered the goods to the next connecting carrier in good order, and was not liable under its contract, or by law, for the delivery of the goods at destination. And in so proceeding the shipper, i. e., the defendant in error, acknowledged that the plaintiff in error was not under the contract of shipment, or by law, responsible except to the end of its line, and that it delivered the goods to the next connecting carrier in good order. Notwithstanding this is true, yet the plaintiff in error sought to show that it had acted in the utmost good faith in the matter, and had handled the shipment promptly, and had delivered it to the next carrier in good order. See testimony of J. C. Nowell, J. W. McDade, J. E. Mattox and J. W. Varnon, offered by the plaintiff in error, and rejected by the court. (Record pp. 28, 29 and 30.) This testimony will show

that there was no delay in the shipment over the rails of the plaintiff in error, and that the car-load of grapes was promptly delivered to the next connecting carrier in good order, and that the car-load of grapes was received in like good order by the W. & A. Railroad, operated by the N. C. & St. L. Ry., and delivered to the Nashville Division of the N. C. & St. L. at Chattanooga, Tenn., in like good order.

The defendant offered to show by the testimony of J. L. Graham, its claim agent, see 6th Ground of Motion for New Trial, Record p. 27, that

> "He had charge of the tracing of the freight in controversy; that he instituted search for the information asked for by the plaintiff in the court below; that he proceeded vigorously by letters and telegrams, and urged the lines to furnish it in thirty days, and it was utterly impossible to obtain the information within thirty days, but it was tendered as soon as obtained."

Here we have the sworn statement of the claim agent of the Central of Georgia Railway Company, in opposition to the decisions of the Supreme Court of Georgia, that it is "common knowledge" that railway companies could get "the commonest details of the simplest transactions" from other railway companies in reference to its own matters, and could as easily do so when asking information for the benefit of the shipper. This evidence establishes the fact that it was impossible to get the information asked; and notwithstanding this evidence, it was held by the trial court, whose judgment was affirmed by the Supreme Court of

Georgia, that the defendant could not be heard to make such defense, and the court adjudged the plaintiff in error liable for the amount of the damage done to the shipment in question, i. e., so enforced the statute as to make the plaintiff in error liable for damages resulting from the negligence of another carrier, over whose conduct it had no control, and for whose acts it was not responsible under the terms of the contract of shipment, or the law of the State of Georgia.

VI.

THE STATUTE DOES NOT PERMIT ANY DEFENSE.

The statute in question does not permit the carrier to make any defense. It provides that a carrier failing to trace freights as required shall, as a "penalty" for failing to trace, be liable in the same manner and to the same extent as if the loss or damage to the freight had occurred on its line. The Act itself, Code, section 2318, hereinbefore quoted, denominates this imposed liability a "*penalty*" for failing to trace as required by the statute, and the Supreme Court of Georgia in this case referred to this statute as imposing a "*penalty*" upon the initial carrier for failure to give the information sought. See near top of page 44 of Record.

It is true that the statute provides that the initial carrier shall become liable for the freight damaged or lost in the same manner and to the same extent as if the damage or

loss occurred on its line. But when we consider what defense could be made by a carrier who had damaged, destroyed or lost freight, it will be seen that the statute leaves the initial carrier failing to trace freight no defense, for a carrier can only defend under the laws of the State of Georgia against liability where the freight is lost, damaged or destroyed on its line by setting up that the loss or damage occurred "by the act of God or the public enemies of the State." Code of Georgia, 1895, section 2264. The carrier is left no defense by way of setting up his own conduct or exemption from liability, but is made to assume the liability of the carrier in whose hands the goods were when lost, damaged or destroyed, the same as if such loss or damage had occurred on its line. Nor could the initial carrier, who is proceeded against for failing to comply with the provisions of section 2317 of the Code, *supra*, set up any defense that the carrier [redacted] who damaged the goods might have demanded the goods under the law of the State in which the damage occurred, but must answer for damages which were occasioned by another carrier in another State, according to the rule of liability prescribed in section 2264 of the Code of Georgia, *supra*.

Respectfully submitted,

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